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*If you wish to access the previous issues of CTIE and China Tax & Investment News, please contact us.

**China Tax Center**

**China Tax & Investment Express**

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**Tax circulars**

- **Decision on the abolishment of the “Provisional Regulations of the People’s Republic of China (PRC) on Business Tax (BT)” and the amendments to the “Provisional Regulations of the PRC on Value-added Tax (VAT)” (State Council Order [2017] No. 691)**

**Synopsis**

From 1 May 2016, the nationwide VAT pilot arrangements were fully launched with the expanded scope to cover the construction industry, real estate industry, finance industry and life-style service industries, which means the BT regime (that has been implemented since 1994) was practically replaced. In this respect, on 30 October 2017, the State Council passed the Decision on the abolishment of the “Provisional Regulations of the PRC on BT” and the amendments to the “Provisional Regulations of the PRC on VAT” (hereinafter referred to as the “Decision”) which aims to legalize the achievements of VAT pilot arrangements.
The Decision was later announced to the public on 19 November 2017 and became effective on its promulgation date. The full contents of the revised “Provisional Regulations of the PRC on VAT” (hereinafter referred to as the “Revised VAT Provisional Regulations”) were also announced via the Decision. Upon the effectiveness of the Revised VAT Provisional Regulations, the prevailing policies of the VAT pilot arrangements (such as Caishui [2016] No. 36 (“Circular 36”, i.e., Notice regarding the final stage of the VAT pilot arrangements) shall remain valid. (Please refer to Indirect Tax Alerts no. 2016001 and no. 2016002, CTIE2016012 for details of Circular 36.)

Our observations

Generally, the Revised VAT Provisional Regulations are modified and updated according to the prevailing policies of the VAT pilot arrangements as well as the simplification and unification of VAT rates (that have been implemented since July 2017). There are no fundamental changes made in the Revised VAT Provisional Regulations. We have summarized major changes made in the Revised VAT Provisional Regulations in the table below (the changes are marked in red).

<table>
<thead>
<tr>
<th>Key changes</th>
<th>Our observations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of taxable activities subject to VAT (Article 1)</strong></td>
<td>The scope of taxable activities under the VAT pilot arrangements are now combined in the scope of taxable activities subject to VAT as specified in Article 1 of the Revised VAT Provisional Regulations.</td>
</tr>
<tr>
<td>All entities and individuals engaging in sales of goods, provision of labor of processing, repairs (hereinafter referred to as “labor”) and replacement services, sales of services, intangible assets and immovable assets, and importation of goods within the territory of the PRC are taxpayers of VAT (hereinafter referred to as “taxpayers”), and shall be subject to VAT in accordance with the VAT Provisional Regulations.</td>
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<tr>
<td><strong>VAT rates (Article 2)</strong></td>
<td>Tax rates of taxable activities under the VAT pilot arrangements (i.e., 11% and 6% as well as cross-border sales of services and intangible assets eligible for 0%) are combined into the stipulations regarding VAT rates as prescribed in Article 2 of the Revised VAT Provisional Regulations. Besides, according to Caishui [2017] No. 37 (“Circular 37”, i.e., the Notice regarding policies related to the simplification and unification of VAT rates), the scope of products, such as agricultural products, books, etc. are subject to VAT at 11% instead of 13% from 1 July 2017. These changes are also updated in the Revised VAT Provisional Regulations accordingly.</td>
</tr>
<tr>
<td>(1) For taxpayers engaging in sales of goods, labor, leasing of tangible movable assets or importation of goods other than those stipulated in Items (2) and (4) and (5) of Article 2, the applicable tax rate shall be 17%.</td>
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</tr>
<tr>
<td>(2) For taxpayers engaging in transportation, postal, basic communications, construction, leasing of immovable assets, transfer of land use rights, as well as sales or importation of the following goods, the applicable tax rate shall be 11%:</td>
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<tr>
<td>i. Agricultural products such as food grains, edible vegetable oils and salt</td>
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<tr>
<td>ii. Tap water, heat, air conditioning, hot water, coal gas, liquefied petroleum gas, natural gas, dimethyl ether, methane gas, coal products for residents</td>
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<td>iii. Books, newspapers, magazines, audio-visual products, electronic publications</td>
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<tr>
<td>iv. Feeds, chemical fertilizers, agricultural chemicals, agricultural machinery and covering plastic-film for farming</td>
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<tr>
<td>v. Other goods as regulated by the State Council</td>
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<tr>
<td>(3) For taxpayers engaging in sales of services and intangible assets, other than those stipulated in Items (1), (2) and (5) of Article 2, the applicable tax rate shall be 6%.</td>
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<tr>
<td>(4) For taxpayers exporting goods, the applicable tax rate shall be 0%, except as otherwise stipulated by the State Council.</td>
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<tr>
<td>(5) For taxpayers engaging in cross-border sales of services and intangible assets as prescribed by the State Council, the applicable tax rate shall be 0%.</td>
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<tr>
<td>Key changes</td>
<td>Our observations</td>
</tr>
<tr>
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<tr>
<td><strong>Creditable input VAT amount (Article 8)</strong></td>
<td>The deduction rate of agricultural products is changed to 11% from 13% according to Circular 37. (Please refer to CTIE2017018 for details of Circular 37.) In addition, Item 4 is newly added to make it consistent with Circular 36.</td>
</tr>
<tr>
<td>Where taxpayers purchase goods, labor, services, intangible assets and immovable assets, the relevant VAT paid or borne by such taxpayers shall be the input VAT.</td>
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<tr>
<td>The following input VAT amount shall be creditable against the amount of output VAT:</td>
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<tr>
<td>(1) VAT indicated on the special VAT invoices obtained from the sellers</td>
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<tr>
<td>(2) VAT indicated on the import VAT payment demand notes issued by Customs</td>
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<tr>
<td>(3) For purchase of agricultural products, other than those indicated on special VAT invoices or import VAT payment demand notes issued by Customs, the amount of creditable input VAT can be calculated based on the purchase price shown on the agricultural product sales invoices or agricultural product purchasing invoices with an 11% deduction rate except as otherwise stipulated by the State Council. The creditable input VAT should be calculated based on the formula below:</td>
<td></td>
</tr>
<tr>
<td>[ \text{Input VAT} = \text{Purchase price} \times \text{Deduction Rate} ]</td>
<td></td>
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<tr>
<td>(4) For labor, services, intangible assets or immovable assets purchased from overseas entities or individuals, the creditable input VAT is indicated on the tax clearance invoices obtained from the tax authorities or withholding agents.</td>
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<tr>
<td>Adjustments to the allowable items and deductible rates shall be subject to approval by the State Council.</td>
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<tr>
<td><strong>Non-creditable input VAT amount (Article 10)</strong></td>
<td>Article 10 is revised according to the relevant rules under the VAT pilot arrangements.</td>
</tr>
<tr>
<td>The input VAT amount incurred for the following items shall not be creditable against the amount of output VAT:</td>
<td></td>
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<tr>
<td>(1) Goods, labor, services, intangible assets and immovable assets purchased which were subject to VAT at a simplified calculation method, exempt from VAT, or used for group welfare or personal consumption</td>
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<tr>
<td>(2) Goods, as well as relevant labor and transportation services purchased which suffer abnormal losses</td>
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<tr>
<td>(3) Goods (excluding fixed assets), labor and transportation services purchased and consumed for work-in-progress products or finished goods which suffer abnormal losses</td>
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<tr>
<td>(4) Other items as prescribed by the State Council</td>
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</tr>
<tr>
<td><strong>Refund (exempt) policy (Article 25)</strong></td>
<td>The general stipulation regarding refund (exempt) of cross-border sales of services and intangible assets is added in the Revised VAT Provisional Regulations. Detailed measures in this regard may be found in SAT PN [2014] No. 11 (“PN 11”, i.e., “Administrative Measures on Tax Refund/Exemption for Taxable Services subject to Zero VAT Rate”), SAT Announcement [2015] No. 88 (“PN 88”, i.e., Supplementary announcement of PN 11) as well as Circular 36. (Please refer to CTIE2014088 and CTIE2015051 for details of PN 11 and PN 88.)</td>
</tr>
<tr>
<td>Taxpayers engaging in exportation of goods which are eligible for the refund (exempt) policy may, upon completion of export procedures with the customs offices, apply for the tax refund (exemption) on those export goods with their supervising tax authorities on a monthly basis by submitting the relevant documents such as the customs declaration forms, etc. Entities and individuals engaging in cross-border sales of services and intangible assets which are eligible for the refund (exempt) policy may, apply for the tax refund (exemption) with their supervising tax authorities within the prescribed time frame. The detailed measures in this regard shall be formulated by the supervising finance and tax department of the State Council.</td>
<td></td>
</tr>
</tbody>
</table>
In accordance with the statutory taxation principle, it is understood that the respective government authorities shall further draft a New VAT Law to address the relevant matters governed in the Revised VAT Provisional Regulations. We will closely keep an eye on any further development in this regard, so please stay tuned.

You can click this link to access the full content of the Decision: http://www.gov.cn/zhengce/content/2017-12/01/content_5243734.htm

You can click this link to access the full content of the Q&As regarding the Decision by the Legal Affairs Office of the State Council, Ministry of Finance and State Administration of Taxation: http://tfs.mof.gov.cn/zhengwuxinxi/zhengcejiedu/201712/t20171201_2763966.html

You can click this link to access the full content of Circular 36: http://www.chinatax.gov.cn/n810341/n810755/c2043931/content.html

You can click this link to access the full content of Circular 37: http://bsq.jsgs.gov.cn/art/2017/6/26/art_3087_16393.html

You can click this link to access the full content of PN 11: http://www.gov.cn/gongbao/content/2014/content_2701607.htm

You can click this link to access the full content of PN 88: http://www.chinatax.gov.cn/n810341/n810755/c1956652/content.html

► Notice regarding the “Implementation Measures for Expanding the Scope of Pilot Run of Resource Tax (RT) Reform on Water Resources” (Caishui [2017] No. 80)

Synopsis

On 9 May 2016, the Ministry of Finance (MOF), State Administration of Taxation (SAT) and Ministry of Water Resources (MWR) jointly released Caishui [2016] No. 55 (“Circular 55”, i.e., Provisional Measures for the Pilot Launch of RT Reform on Water Resources) to launch a pilot run of RT reform on water resources in Hebei Province starting from 1 July 2015. Furthermore, the MOF, SAT and MWR jointly released Caishui [2016] No. 130 (“Circular 130”, i.e., Notice regarding opinions on certain policies related to the RT reform on water resources in Hebei Province) on 1 December 2016 to detail the issues related to the RT reform on water resources in Hebei Province. (Please refer to CTIE2016019 and CTIE2016049 for details of Circulars 55 and 130.)

In supporting a smooth implementation of the pilot run in Hebei, on 24 November 2017, the MOF, SAT and MWR jointly released Caishui [2017] No. 80 (“Circular 80”) to expand the RT pilot run on water resources to Beijing, Tianjin, Shanxi, Inner Mongolia, Shandong, Henan, Sichuan, Shanxi and Ningxia from 1 December 2017. The expanded RT pilot run in the nine pilot locations shall generally be the same as that in Hebei Province.
Taxpayers and tax basis

Under the pilot, entities and individuals who obtain and use water resources from rivers, lakes (including reservoirs) and underground are subject to RT.

► For general water use, RT shall be levied based on the actual amount of water consumed.
► For dewatering of water resources related to mining and construction projects, RT shall be levied based on the amount of water drained for the project.
► Water to be used for cooling of thermal power generation shall be subject to RT based on the actual electric-power output.

Preferential RT treatments

According to Circular 80, preferential RT treatments shall be applied to the following situations:

► Using water within prescribed volume for agricultural purpose shall be exempt from RT.
► Using regenerated water from sewage regenerated system shall be exempt from RT.
► Using water by military and police forces outside of the urban public water supply network shall be exempt from RT.
► Using water for pumped storage power generation shall be exempt from RT.
► Water injection for oil production shall be exempt from RT.
► Other situations as prescribed by the MOF and SAT that should be exempt from RT or subject to reduction of RT.

Situations not subject to RT

► Using water by rural collective economic organizations and their members from the pools and reservoirs owned by the rural collective economic organizations
► Using a small volume of water for household purposes or a small amount of animal husbandry/poultry farming
► Using water for dispatching water resources by the competent administrative departments
► Using water for emergency proposes to ensure construction safety of underground mines or other underground construction projects
► Using water for emergency proposes to mitigate harm to public safety or interests
► Using water for emergency proposes for agriculture drought or ecology and environment preservation

Applicable RT rates

The average lowest RT rate for the respective location is stipulated in Circular 80.

You can click this link to access the full content of Circular 80: [http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=10174368&flag=1](http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=10174368&flag=1)

You can click this link to access the full content of Circular 130: [http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201612/t20161216_2483582.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201612/t20161216_2483582.html)

You can click this link to access the full content of Circular 55: [http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201605/t20160510_1984619.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201605/t20160510_1984619.html)
Public notice (PN) regarding certain issues on certificates for foreign tax credits related to income derived from overseas contract projects (SAT PN [2017] No. 41)

Synopsis

According to PRC Corporate Income Tax Law and its Implementation Rules, as well as Caishui [2009] No. 125 (“Circular 125”, i.e., Foreign tax credits related to overseas-source income) and SAT PN [2010] No. 1 (“PN 1”, i.e., the “Procedural Guidelines on Foreign Tax Credits Related to Overseas-sourced Income”), the SAT released SAT PN [2017] No. 41 (“PN 41”) on 21 November 2017 to specify the matters related to foreign tax credits for income derived from overseas contract projects in order to support the development of go-global enterprises. (Please refer to CTIE20100001 and CTIE2010027 for details of Circular 125 and PN 1.)

Key features of PN 41 are as follows:

► Tax clearance certificate substantiating the foreign tax payment

Where an enterprise engages in an overseas construction project as a subcontractor or a member of a consortium, the enterprise may not be able to obtain the tax clearance certificate or tax invoice under its own name which may lead to uncreditable foreign tax payment. According to PN 41, the enterprise may obtain a split source document (i.e., Attachments I or II in PN 41) from the contracting party or the leading member of the consortium in order to claim its foreign tax credit.

According to PN 41, the leading member of a consortium should be a member who derived the largest amount of income according to the contract or a member who has been previously appointed via agreement from all members to take the leading role.

► Proportion of foreign tax payment between various parties

According to PN 41, foreign tax payments should be allocated to subcontractors/members of a consortium by the contracting party or leading member of the consortium based on the actual income derived or actual work undertaken by each party, or other reasonable factors if applicable.

► Record filing and documentation requirements

The contracting party or leading member of a consortium should file a record with the supervising tax authority after completing the split source document and keep the requisite documents as prescribed in PN 41 for further references. A photocopy showing the slip source document has been filed for record should be submitted by the subcontractor or member of the consortium when it applies to claim foreign tax credit.

► Follow-up administration

According to PN 41, the contracting party and the leading member of a consortium should establish accounts to manage the allocation of income for each project. Mechanisms shall be established among the supervising tax authorities, the contracting party, subcontractors and members of the consortium for information verification and exchange purposes.

PN 41 shall apply to annual CIT filing for 2017 and onwards, and matters related to unsettled foreign tax credits for previous years.

You can click this link to access the full content of PN 41:
http://www.chinatax.gov.cn/n810341/n810755/c2929036/content.html

You can click this link to access the full content of Circular 125:
http://www.chinatax.gov.cn/n810341/n810765/n812166/n812602/c1086639/content.html

You can click this link to access the full content of PN 1:
http://www.chinatax.gov.cn/n810341/n810765/n812161/n812554/c1085183/content.html
Synopsis

On 31 October 2017, the National Development and Reform Commission (NDRC) along with 27 other central government authorities released Fagaiwaizi [2017] No. 1893 (“Circular 1893”) which aims to strengthen the development of credit system in the field of foreign economic cooperation.

According to Circular 1893, on the same day, 28 central government authorities jointly released the Memorandum of Understanding on Joint Disciplinary of Entities in the Field of Foreign Economic Cooperation Acting in Bad Faith (hereinafter referred to as the “Memorandum”) via Fagaiwaizi [2017] No. 1894.

The Memorandum contains 39 disciplinary measures to punish entities and responsible persons acting in bad faith in the field of foreign economic cooperation. The targets of joint disciplinary actions shall be classified by the competent departments for foreign economic cooperation and local government authorities. According to the Memorandum, disciplinary actions are classified into five categories, i.e., “disciplinary actions for dishonest behaviors in outbound investments”, “disciplinary actions for dishonest behaviors in overseas contract projects/labor cooperation projects”, “disciplinary actions for dishonest behaviors in overseas financial cooperation”, “disciplinary actions for dishonest behaviors in international trading” and other disciplinary actions.

The NDRC shall update and share the information of entities acted in bad faith as well as their responsible persons through a national credit rating information sharing platform. The relevant information shall be announced via the official websites of the relevant government authorities.

You can click this link to access the full content of Circular 1893: http://www.ndrc.gov.cn/zcfb/zcfbtz/201711/t20171128_868085.html

You can click this link to access the full content of the Memorandum: http://www.ndrc.gov.cn/zcfb/zcfbtz/201711/t20171128_868074.html

Other business, customs and tax related circulars recently announced by central government authorities:

- Notice regarding enhancing information sharing and business collaboration between tax authorities and the departments of housing and urban-rural development (Shuizongfa [2017] No. 114)
  http://www.qhcin.gov.cn/info/1040/19653.htm

- PN regarding the “Measures on the Publicity and Transfer of Information related to Tax Consultation Services (Trial)” (SAT PN [2017] No. 42)
  http://www.chinatax.gov.cn/n810341/n810755/c2930218/content.html

- Notice regarding further reinforcing administration on foreign investment in inland water transportation industry and shipping agency industry (Jiaobanshuihan[2017] No.1724)
  http://zizhan.mot.gov.cn/zfxxgk/bmssj/syj/201711/t20171124_2941141.html

- Notice regarding matters related to the purchase and sale of foreign exchange by foreign nationals who have obtained the foreign permanent resident ID card (Huizongfa [2017] No. 59)
  http://www.waizi.org.cn/law/19816.html

- Decision on the modification of certain administrative regulations (State Council Order [2017] No. 690)
  http://www.gov.cn/zhengce/content/2017-11/29/content_5243174.htm

- PN regarding the import volume, application qualification, allocation principles and application procedures of import quotas for refined oil (fuel oil) imported by non-state-operated trading companies in 2018 (MOFCOM PN [2017] No. 80)
  http://www.mofcom.gov.cn/article/b/e/201711/20171102676512.shtml

- PN regarding the adjustment of import duty rates for certain consumer products (GAC PN [2017] No. 57)
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